

Message Text

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PAGE 01 STATE 063596

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

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E.O. 11652: NA

TAGS: ACLM IN

SUBJECT: UTTAM SINGH DUGGAL V. USA

REF: NEW DELHI 3440, 75 NEW DELHI 10260, 75 STATE
178992, 75 NEW DELHI 6938

1. EMBASSY HAS REQUESTED SUMMARY OF SUBSTANTIVE PROVISIONS OF SOVEREIGN IMMUNITY BILL. BILL IS LENGTHY AND COMPLEX. ITS PRINCIPAL PURPOSES ARE (A) TO TRANSFER ALL U.S. SOVEREIGN IMMUNITY DECISIONS TO U.S. COURTS; (B) TO PROVIDE COMPREHENSIVE METHODS FOR SERVICE OF PROCESS AGAINST FOREIGN GOVERNMENTS; (C) TO CODIFY THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY UNDER INTERNATIONAL LAW, WHICH PERMITS SUITS AGAINST FOREIGN GOVERNMENTS AS TO THEIR COMMERCIAL AND PRIVATE ACTS, BUT NOT AS TO THEIR STRICTLY PUBLIC ACTS; AND (D) TO DEFINE THE LIMITED CIRCUMSTANCES WHERE THE COMMERCIAL PROPERTY OF A FOREIGN STATE CAN BE ATTACHED IN ORDER TO SATISFY A FINAL JUDGMENT.

2. THE ASPECT OF THE BILL THAT SEEMS MOST RELEVANT TO INSTANT CASE IS PORTION THAT WOULD CODIFY THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY UNDER INTERNATIONAL LAW. THE
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PAGE 02 STATE 063596

BILL WOULD PERMIT ALL SUITS AGAINST FOREIGN STATES AND

THEIR INSTRUMENTALITIES WHICH ARE BASED ON A COMMERCIAL

ACTIVITY HAVING SOME NEXUS WITH THE UNITED STATES.
WHETHER A CLAIM RELATES TO A COMMERCIAL ACT OR TO A
PUBLIC ACT OF A FOREIGN STATE IS TO BE DETERMINED BY THE
NATURE OF THE ACT -- I.E., WHETHER THE SAME ACT OR
TRANSACTION COULD BE PERFORMED BY A PRIVATE PARTY. THIS
IS THE ONLY CONSIDERATION. THE FACT THAT A TRANSACTION
FURTHERS A PUBLIC PURPOSE OR OBJECTIVE IS IRRELEVANT UNDER
THE BILL AND UNDER INTERNATIONAL LAW, AT LEAST UNDER U.S.
VIEW.

3. THE BILL ALSO PERMITS SUITS BASED ON PRIVATE AND
COMMERCIAL TORTS OF A FOREIGN STATE; SUITS TO DETERMINE
RIGHTS IN PROPERTY LOCATED IN THE U.S.; SUITS TO ENFORCE
MARITIME LIENS AGAINST GOVERNMENT VESSELS THAT ENTER
U.S. PORTS; AND SUITS TO DETERMINE RIGHTS IN EXPROPRIATED
PROPERTY WHERE THE PROPERTY, OR PROPERTY EXCHANGED FOR
IT, EITHER ENTERS THE U.S. OR IS OWNED BY A STATE
ENTERPRISE ENGAGED IN COMMERCIAL ACTIVITIES IN THE U.S.

4. THE BILL PERMITS SUITS AGAINST FOREIGN STATES WHICH
HAVE WAIVED THEIR IMMUNITY EITHER BY EXPLICITLY OR BY
IMPLICATION. IT ALSO PERMITS MOST COUNTERCLAIMS AGAINST
A FOREIGN STATE WHICH ITSELF HAS BROUGHT A LAW SUIT
IN THE U.S.

5. THE BILL PRESERVES IMMUNITY FOR SUITS WITH RESPECT TO
DEBT OBLIGATIONS INCURRED BY A FOREIGN STATE FOR GENERAL
GOVERNMENTAL PURPOSES, UNLESS THE FOREIGN STATE HAS
EXPLICITLY WAIVED ITS IMMUNITY, OR UNLESS U.S. SECURITIES
LAWS HAVE BEEN VIOLATED.

6. A COPY OF THE BILL AND SECTION-BY-SECTION ANALYSIS
ARE BEING SEPARATELY POUCHED.

7. THE BILL IS IN EARLIEST STAGES OF LEGISLATIVE
PROCESS. FIRST CONGRESSIONAL HEARINGS ARE NOT EXPECTED
UNTIL APRIL AT THE EARLIEST. WE HAD HOPED THE BILL
WOULD BE ENACTED SOMETIME IN 1976, BUT THE PROSPECTS
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PAGE 03 STATE 063596

ARE BECOMING MORE REMOTE. KISSINGER

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